

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 839 - HB 1376

April 1, 2021

SUMMARY OF BILL: Establishes the process for District Attorneys General to review civil asset forfeitures. Prohibits state and local law enforcement from relinquishing seized property to a federal agency for purpose of the property's forfeiture under the federal Controlled Substances Act. Prohibits state and local law enforcement from accepting payment from a joint task force or collaboration unless the aggregate net equity value of the property and currency seized in a case exceeds \$100,000, excluding contraband. Changes the required standard of proof for property forfeiture hearings and appeals. Exempts United States currency totaling \$1,000 or less, and a motor vehicle with less than \$2,000 in market value, from seizure or forfeiture. Requires each state and local agency to establish a seizure exemption policy.

ESTIMATED FISCAL IMPACT:

**Decrease State Revenue – Net Impact – \$1,125,200/
FY21-22 and Subsequent Years**

**Increase State Expenditures – \$460,900/FY21-22
\$424,100/FY22-23 and Subsequent Years**

**Decrease Local Revenue – Net Impact – \$4,805,300/
FY21-22 and Subsequent Years**

Assumptions:

District Attorneys General:

- Civil forfeiture is a legal process in which law enforcement agencies seize assets suspected of being involved in criminal or illegal activity. Civil forfeiture may be initiated even if the property owner has not been charged with any criminal or illegal activity.
- Civil forfeiture actions are in rem, i.e., they are actions brought against property or a property interest and not against an individual. *Stuart v. State Dept. of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998).
- Under current procedure, a law enforcement agency may seize property for which probable cause exists that the property was used or involved in criminal or illegal activity. The law enforcement agency files a civil forfeiture action. The property owner then has the burden to prove that the property was not involved in the commission of the offense.

- According to the *Department of Safety & Homeland Security Legislative Report Calendar Year 2019*, the DOS Legal Division opened 5,512 civil asset forfeiture cases in calendar year 2019.
- At present, district attorneys (DAs) are not involved in the civil asset forfeiture process.
- The proposed legislation would require seizing officers to submit required information to the DA for the jurisdiction in which each seizure was made and require the DA to review the information provided and determine if there is probable cause to justify the forfeiture. If not, the DA is required to file a motion to dismiss the application for forfeiture warrant.
- The proposed legislation will require the addition of one assistant district attorney, three paralegals and four secretaries to review civil asset forfeiture cases.
- The one-time increase in state expenditures in FY21-22 relative to the eight additional positions is estimated to be \$36,800 [(\$2,800 office furniture + \$1,800 computers) x 8].
- The total increase in state expenditures in FY21-22 relative to the positions is estimated to be \$460,933 (\$286,740 salary + \$101,593 benefits + \$13,000 travel expenses + \$800 printing + \$2,000 communications + \$16,000 rentals + \$4,000 supplies + \$36,800).
- The total recurring increase in state expenditures associated with the positions is estimated to be \$424,133 (\$286,740 salary + \$101,593 benefits + \$13,000 travel expenses + \$800 printing + \$2,000 communications + \$16,000 rentals + \$4,000 supplies).

Equitable Share Program:

- When the law enforcement agency is a state entity, e.g., the Tennessee Bureau of Investigation (TBI), the Department of Safety and Homeland Security, and the Tennessee Alcoholic Beverage Commission (ABC), the forfeiture action is filed with the Secretary of State's Division of Administrative Procedures (Administrative Procedures).
- A state or local law enforcement agency may also be required to transfer the property to the federal government, which may institute forfeiture proceedings under the federal procedures. The monies from these federal proceedings are deposited into the Assets Forfeiture Fund of the Department of Justice (DOJ) established by the Comprehensive Crime Control Act of 1984, 98 Stat. 1837 (1984). These funds are distributed to state and local law enforcement agencies by the Attorney General (21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a) through the Equitable Sharing Program.
- Equitable Share Funds are required to be used for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency; therefore, this analysis estimates any funds distributed from the Equitable Sharing Program will remain with the requesting law enforcement agency and not revert back to the General Fund.
- The three year average that state law enforcement agencies have received is approximately \$731,074 in payments from the Equitable Sharing Program, and local law enforcement agencies received approximately \$3,159,005 in payments from the Equitable Sharing Program.
- This analysis estimates 80 percent of such funds resulted from civil asset forfeiture cases exceeding \$100,000, excluding contraband.

- Prohibiting state and local law enforcement agencies from receiving funds with a net equity value less than \$100,000 will lead to a recurring decrease in 20 percent (100% - 80%) of state law enforcement agency revenue estimated to be \$146,215 (\$731,074 x 20%) and a recurring decrease in local law enforcement agency revenue estimated to be \$631,801 (\$3,159,005 x 20%).
- The proposed legislation prohibits state and local governments from relinquishing seized property to a federal agency for purpose of the property's forfeiture under the federal Controlled Substances Act.
- The average amount remitted by state and local law enforcement agencies to the Equitable Sharing Program each year over the last three years is \$8,400,993.
- This analysis assumes 19 percent of such funds were remitted by the state and 81 percent of funds were remitted by local agencies.
- This analysis assumes that state and local law enforcement agencies participate in multijurisdictional collaboration and use federal laws to seize assets in some drug cases; therefore, prohibiting such agencies from transferring property over to the federal government for such drug cases will lead to a 10 percent increase in revenue statewide.
- The total recurring increase in state revenue resulting from the prohibition to turn civil asset forfeiture cases over to the federal government is \$159,619 (\$8,400,993 x 19% x 10%).
- The total recurring increase in local revenue resulting from the prohibition to turn civil asset forfeiture cases over to the federal government is estimated to be \$680,480 (\$8,400,993 x 81% x 10%).
- The total recurring net increase in state law enforcement revenue in FY21-22 and subsequent years resulting from the proposed legislation is estimated to be \$48,679 (\$680,480 - \$631,801).
- The total recurring net increase in local revenue in FY21-22 and subsequent years resulting from the proposed legislation is estimated to be \$13,404 (\$159,619 - \$146,215).

Burden of Proof:

- Pursuant to Tenn. Code Ann. § 40-33-210(a), the state is required to have a burden to prove by a preponderance of evidence that: (1) seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture, and (2) the owner or co-owner of the property know that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture.
- Pursuant to Tenn. Code Ann. § 40-33-213, an aggrieved party may seek judicial review. The reviewing court is required to use the preponderance of evidence standard in determining whether to sustain or reverse the final order of the applicable agency.
- The proposed legislation requires a clear and convincing evidence standard by the state and by the reviewing court.
- The standard of clear and convincing evidence is a more rigorous standard to meet than a preponderance of the evidence but a less rigorous standard than proving evidence beyond a reasonable doubt.
- Any impact resulting from requiring the state and reviewing court to use a more rigorous standard in determining outcomes of civil asset forfeiture hearings and appeals is

dependent on the circumstances of each applicable civil asset forfeiture; however, the net impact of elevating such standard is estimated to be not significant.

Exemptions:

- The proposed legislation exempts United States currency totaling \$1,000 or less, and a motor vehicle with less than \$2,000 in market value, from civil forfeiture.
- This analysis assumes that civil forfeiture actions for such items are filed with the Secretary of State's Division of Administrative Procedures and not included in the Equitable Share Program.
- According to the *Department of Safety & Homeland Security Legislative Report Calendar Year 2019*, the total currency forfeited in 2019 was \$11,985,121.
- This analysis assumes that the currency forfeited will remain constant in future fiscal years.
- This analysis estimates that 100 percent of currency forfeitures were United States currency.
- This analysis estimates 50 percent, or \$5,992,561 ($\$11,985,121 \times 50\%$), of currency forfeitures resulted from a seizure or forfeiture totaling \$1,000 or less.
- This analysis assumes 19 percent of such currency forfeitures resulted from state seizures and 81 percent of such currency forfeitures resulted from local seizures.
- Exempting such currency from forfeiture will result in a recurring decrease in state revenue in FY21-22 and subsequent years estimated to be \$1,138,586 ($\$5,992,561 \times 19\%$); and a recurring decrease in local revenue in FY21-22 and subsequent years estimated to be \$4,853,974 ($\$5,992,561 \times 81\%$).
- This analysis estimates that any revenue derived from the sale of a forfeited vehicle valued at \$2,000 or less is offset by expenditures associated with the confiscation, towing, storage and sale of such vehicle. Therefore, any reduction in revenue resulting from law enforcement agencies no longer seizing such vehicles will be offset by a corresponding reduction in expenditures associated with processing such vehicles. The net impact of such vehicle exemption is estimated to be not significant.
- Any impact to state or local law enforcement agencies resulting from establishing a seizure exemption policy is estimated to be not significant.

Total Impact to Revenue

- The total recurring net decrease in state revenue in FY21-22 and subsequent fiscal years resulting from the proposed legislation is estimated to be \$4,805,295 ($\$4,853,974 - \$48,679$).
- The total recurring net decrease in state local in FY21-22 and subsequent fiscal years resulting from the proposed legislation is estimated to be \$1,125,182 ($\$1,138,586 - \$13,404$).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Krista Lee Carsner, Executive Director

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